

ESTTA Tracking number: **ESTTA543172**Filing date: **06/14/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Cloudpath Networks, Inc.		
Entity	Corporation	Citizenship	Colorado
Address	1120 W. 122nd Ave. Suite 302 Westminster, CO 80234 UNITED STATES		

Attorney information	Stephen Gruber Neugeboren O'Dowd PC 1227 Spruce Street, Suite 200 Boulder, CO 80020 UNITED STATES steve@neugeborenlaw.com, craig@neugeborenlaw.com Phone:7205364908
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Registration Subject to Cancellation

Registration No	4174640	Registration date	07/17/2012
Registrant	Racemi, Inc. #360 360 Interstate North Parkway SE Atlanta, GA 30339 UNITED STATES		

Goods/Services Subject to Cancellation

Class 042. First Use: 2011/08/23 First Use In Commerce: 2011/08/23
All goods and services in the class are cancelled, namely: Software as a service (SAAS) services featuring a hosted computer software application for migrating computer operating systems, applications, and data between customer data centers and public cloud providers

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	Common-law trademark rights.

Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	4045900	Application Date	08/12/2009
Registration Date	10/25/2011	Foreign Priority Date	NONE
Word Mark	CLOUDPATH		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 2008/10/01 First Use In Commerce: 2008/10/01 PROVIDING ACCESS TO ONLINE SOFTWARE FOR USE IN AUTOMATED TROUBLE SHOOTING OF COMPUTER SOFTWARE PROBLEMS WITH ACCESS RESTRICTED TO AUTHORIZED USERS

Attachments	Cloudpath Petition to Cancel Final 06142013.pdf(27395 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Stephen Gruber/
Name	Stephen Gruber
Date	06/14/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Registration No. 4,174,640

Cloudpath Networks, Inc. Petitioner, v. Racemi, Inc. Registrant	Registration No. 4,174,640
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PETITION TO CANCEL

Cloudpath Networks, Inc. ("Petitioner"), is a Colorado Corporation having a place of business at 1120 W. 122nd Ave, Suite 302, Westminster, CO 80234. Racemi, Inc. ("Registrant"), is a Delaware Corporation having a correspondence address at 360 Interstate North Parkway, #360, SE Atlanta, GE 30339. Petitioner believes that it is and/or will be damaged by continued registration of Registration No. 4,174,640 (the "registered mark"), and therefore requests cancellation of the registered mark in whole under 15 U.S.C. § 1064.

As grounds for the Petition to Cancel, Petitioner alleges that:

1. Registration No. 4,174,640 was filed on October 31, 2011 for the mark CLOUD PATH (the "Registrant's mark"), has a first use date of August 23, 2011, and was registered under the following services: Software as a service (SAAS) services featuring a hosted computer software application for migrating computer operating systems, applications, and data between customer data centers and public cloud providers, in international class 042.

2. Petitioner is in the business of providing access to online software for use in automated onboarding, provisioning, migration, and troubleshooting of computer software without information technology (IT) involvement and with access restricted to authorized users. Petitioner's goods and services are marketed and sold throughout many channels of trade.

3. Petitioner has offered products and services in support thereof under the mark and name CLOUDPATH continuously since at least as early as 2008.

4. Petitioner is the owner of all right, title and interest in U.S. Trademark Registration No. 4,045,900 filed with the USPTO on August 12, 2009 and registered with the USPTO on October 25, 2011, for CLOUDPATH (the "Petitioner's mark").

5. Since well prior to Registrant's first use of the challenged mark in connection with the goods and services listed in its registration, Petitioner has extensively and continuously used, advertised and promoted the CLOUDPATH mark for, *inter alia*, the design, selection, implementation and use of computer hardware, software, networking equipment and combinations thereof for itself and others, and related products and services.

6. Upon information and belief, Registrant made no valid use of the CLOUD PATH mark for the registered services prior to the registration or first use of Petitioner's CLOUDPATH mark.

7. Registrant's CLOUD PATH mark so resembles Petitioner's previously registered CLOUDPATH mark, that it has caused actual confusion, under the Trademark Act § 2(d), 15 U.S.C. § 1052(d), when used in connection with Registrant's services.

8. Registrant's CLOUD PATH mark so resembles Petitioner's previously registered CLOUDPATH mark, as to be likely, when used in connection with the Registrant's services, to

cause confusion, to cause mistake, to deceive, and/or to dilute the Petitioner's CLOUDPATH mark, under the Trademark Act § 2(d), 15 U.S.C. § 1052(d).

9. In the alternative, the continued registration of Registrant's CLOUD PATH mark on the Principal Register would be inconsistent with Petitioner's rights under its aforementioned registration and under the common law, and be damaging to Petitioner.

WHEREFORE, Petitioner requests that Registration No. 4,174,640 be cancelled in whole, that judgment in favor of Petitioner be entered, and that this Petition to Cancel be sustained in favor of Petitioner.

Respectfully submitted,

Dated: June 14, 2013

By: /Stephen Gruber/
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Attorneys for Petitioner

Certificate of Service

I certify that on June 14, 2013 I had the attached document emailed and mailed via Federal Express to the following address:

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/ Stephen Gruber/
Stephen Gruber